

INFORMED CONSENT AND THE UTAH STATE LAW

The use of informed consent is no longer simply a luxury. It has become the standard of care, and it makes it extremely difficult for us to defend a case, particularly cases where there has been damage done to the patient such as a paresthesia or lost tooth, when the dentist fails to have documentation that an informed consent was obtained from the patient.

Some dentists have thought that having a patient sign an informed consent undermines patient confidence. However, if patients are approached with the right attitude, the principle of informed consent comes off as a plus. "In our practice we like to have happy patients. We think that a happy patient is an educated patient. Therefore, before we do the (extraction, root canal, etc.) We want you to look over this form and see if you have any questions. We would like you to sign it so we have a record which shows that we did our job of properly educating you." This sort of statement goes hand in hand with your existing process of thoroughly explaining and discussing treatment before it is rendered.

Utah has an excellent statute that addresses informed consent. It states that:

(2) It shall be a defense to any malpractice action against a health care provider based upon alleged failure to obtain informed consent if: (e) the patient or his representative executed a written consent which contains a declaration that the patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired beneficial results of health care and which acknowledges that health care providers involved have explained his condition and the proposed health care and its attendant risks have been answered in a manner satisfactory to the patient or his representatives; such written consent shall be a defense to an action against a health care provider based upon failure to obtain informed consent unless the patient proves that the person giving the consent lacked capacity to consent or shows by clear and convincing proof that the execution of the written consent was induced by the defendant's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

The informed consent statements that we recommend contain the following language:

"I do voluntarily assume any and all possible risks, including the risk of substantial and serious harm, if any, which may be associated with general preventive and operative treatment procedures in hopes of obtaining the potential desire results, which may or may not be achieved, for my benefit or the benefit of my minor child or ward. I acknowledge that the nature and purpose of the foregoing procedures have been explained to me if necessary and I have been given the opportunity to ask questions."

The word "assume" means accept or take upon oneself. By signing such a statement, the patient gives consent for the dentist to provide services. The patient does not accept or condone negligence but simply acknowledges that risks exist and are accepted.

Technically, if a person does not provide informed consent and you treat them anyway, you subject yourself to charges of battery or unpermitted touching and submit yourself to charges of negligence for failing to inform the patient that there are potential risks of treatment. The law holds that a reasonable person should be able to attach significance to a risk or cluster of risks in deciding whether or not to forgo the proposed treatment. Under this standard, the dentist has a duty to disclose all significant or reasonable risks.

What if a patient refuses to assume the risks by not signing the statement? Such a patient should be told that the "consent to proceed" form is designed to apply to basic dentistry and does not substitute for a more detailed form for a more detailed procedure. It simply explains that there are risks to basic dental treatment, including the administration of local anesthesia, and the patient accepts these risks.

Some patients may try to state that it is the duty of the dentist to assume the risks. It is the duty of the dentist to practice within the standard of care and notify the patient of specific risks of a procedure and general risks of dental treatment. It is the patient's duty to consent to treatment once risks are discussed. If a patient will not acknowledge acceptance or assumption of these risks, under no circumstances should they be seen since they are denying consent to treat.